

Planning and travellers
South East England Councils
Consultation response to DCLG
November 2014



Ensuring fairness in the planning system

Question 1: Do you agree that the planning definition of travellers should be amended to remove the words or permanently to limit it to those who have a nomadic habit of life? If not, why not?

Yes No

Comments

South East England Councils (SEEC) supports the principle of equal treatment for everyone in the planning system but it is very important that the changes proposed are not implemented in a way which leaves individual local authorities open to legal challenge or additional costs.

There needs to be clarity on how a local authority establishes beyond doubt whether a particular group has stopped travelling – for example is this the council's duty or should the onus be on the applicant? Clarity is also needed on the definition of how long a stop needs to be before it is no longer 'temporary'.

Any new burdens for councils in gathering suitable evidence must be fully funded by government.

A particular issue raised by several SEEC members is how to treat Gypsy and Traveller planning and housing needs where some in a family travel for work, while other parts of the family stay in one place. This situation is frequently encountered by local authorities.

Leaving interpretation of these matters to be established through appeals or planning court judgements would be inefficient use of time and resources. Risks include:

- Uncertainty and delay in plan making, including doubts regarding the robustness of the evidence base on traveller need
- Differences in interpretation by Planning Inspectors
- Costly and time-consuming appeals and court cases for local authorities.

Question 2: Are there any additional measures which would support those travellers who maintain a nomadic habit of life to have their needs met? If so, what are they?

Yes No

Comments

There is a need to ensure councils are incentivised to deliver transit sites and have the powers to limit and enforce length of stay on such sites. This will help make sure space is available for those who maintain a travelling lifestyle, although delivering and monitoring length of stay on transit sites will have resource implications for councils. Government should consider specific funding streams to support this work.

As mentioned above in Q1, there also needs to be an agreed, workable definition to assess the status of 'persons of nomadic habit of life'. Without this, councils will find it very difficult to make an objective and robust judgement about whether someone has ceased to travel permanently and therefore whether they are entitled to transit provision.

While recognising that transit provision is important, some members also note that it is not a panacea as the numbers of caravans looking for transit pitches is unpredictable. Numbers can vary significantly without notice, leaving transit provision oversubscribed.

Question 3: Do you consider that:

a) we should amend the 2006 regulations to bring the definition of “gypsies and travellers” into line with the proposed definition of “travellers” for planning purposes?

Yes No

Comments

SEEC supports the principle of simplifying and aligning these definitions to ensure consistency on condition that every step is taken to avoid costly and time consuming legal challenge to councils in implementing the change.

It will also be important to avoid challenges to councils' local plans based on existing housing assessments as this could both threaten delivery of housing and create extra cost burdens for councils in reviewing housing assessments.

Members want to see greater clarity on what is covered in a SHMA and what in a GTAA, and when people should be treated as a specific group or considered as part of the settled community. Without clarity there is a danger that there could be a policy vacuum in relation to individuals' status and needs.

and

b) we should also amend primary legislation to ensure that those who have given up travelling permanently have their needs assessed? If not, why not?

Yes No

Comments

See answer to Q3a above.

Protecting sensitive areas and the Green Belt

Question 4: Do you agree that Planning Policy for Traveller Sites be amended to reflect the provisions in the National Planning Policy Framework that provide protection to these sensitive sites (set out in para. 3.1 of the consultation document)? If not, why not?

Yes No

Comments

SEEC welcomes the alignment of planning policy for all applications to ensure clarity and consistency in the protection of all sensitive sites.

Question 5: Do you agree that paragraph 23 of Planning Policy for Traveller Sites should be amended to “local authorities should very strictly limit new traveller sites in the open countryside”? If not, why not?

Yes No

Comments

SEEC welcomes the clarification of guidance on protecting green belt, open countryside, AONB, SSSI, national parks and other areas not allocated in local development plans.

Members also support the Government case that the same rules should apply equally to all forms of development.

Councils would welcome explanatory text to support the change, for example to clarify to what extent the word ‘very’ alters the weight of the paragraph.

Some members in rural authorities highlighted that in some cases the interpretation of ‘open countryside’ is still subjective with decision makers and local communities often in disagreement.

Concern was also expressed about the wording in para 23 of PPTS about land ‘...that is away from existing settlements...’. If Government does not want to treat countryside in urban fringe areas differently, then this phrase should be deleted. Paragraph 55 of the NPPF does not include the word ‘open’ in its guidance for isolated homes in the countryside and so the two documents should be consistent.

Question 6: Do you agree that the absence of an up-to-date five year supply of deliverable sites should be removed from Planning Policy for Traveller Sites as a significant material consideration in the grant of temporary permission for traveller sites in the areas mentioned above (set out in para. 3.7 of the consultation document)? If not, why not?

Yes No

Comments

SEEC welcomes the additional protection for recognised green spaces/ protected land and clarification of councils' ability to refuse temporary permissions in these areas and take such decisions locally on a case-by-case basis. For equity, however, it is important that similar provisions should be applied to all development requests, not just those from Gypsy and Traveller groups.

Members agree that the lack of a 5-year land supply should not outweigh all other considerations. It should **not** be a 'significant' material consideration to avoid Planning Inspectors using the lack of 5-year supply to override considerations of harm to sensitive landscapes. There are examples where an inspector's decision led by 5-year supply has led to sites receiving temporary permissions (often with repeated renewals) in areas where a permanent site would not be considered appropriate. Reapportioning the level of consideration given to 5-year supply would help redress this imbalance.

Members propose that the supply of sites could be set out in the plan making process to address need in this way rather than as a material consideration through planning applications. It is preferable to address shortages in the supply of sites via a plan led process and this will also strengthen protection of sensitive areas such as the Green Belt and AONB.

Question 7: Do you agree with the policy proposal that, subject to the best interests of the child, unmet need and personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances? If not, why not?

Yes No

Comments

Members believe the best interests of a child should be considered on a case by case basis. There is also support for the clarity of protection this proposal would bring to the Green Belt. However members have raised a number of questions and would welcome clarification on these issues before changes are introduced:

- Members are not clear why only the Green Belt is to be given this level of protection. The same high level of protection should also be extended to other sensitive landscape areas, such as AONBs.
- There are reservations about whether the planning function is the place to make decisions about a child's best interests and whether this should instead be considered by either the housing department or specialists in social services, health or education.
- Consideration is also needed to what should happen if the circumstances of the child change.
- In cases where the needs of a child are deemed to outweigh other considerations, clarity should be provided on whether planning permissions can be temporary/ time limited rather than permanent. Other welcome provisions would be ensuring a site is restored to previous condition once it is no longer required.

Addressing unauthorised occupation of land

Question 8: Do you agree that intentional unauthorised occupation should be regarded by decision takers as a material consideration that weighs against the grant of permission? If not, why not?

Yes No

Comments

SEEC supports Government action that gives councils the ability to act against intentional unauthorised developments, however such a change must not simply apply to planning matters concerning Gypsies and Travellers. It would be unfair and inconsistent to treat unauthorised occupation by Gypsies and Travellers in a different way to unauthorised development from the settled community.

There is a long-established principle that planning applications are determined on planning merit and against the local development plan and national policy, so the fact that an application is retrospective is not currently a material consideration. Any change to this principle would need careful consideration and would need to be applied consistently to all applications, whether from settled community or Gypsies and Travellers.

Clarity would also be required on how councils could test and establish whether occupation of a site was intentional or unintentional. Proof of 'intentional' occupation would be difficult to establish and add a burden for decision makers. Without clarity such decisions could be subjective and contentious, leading to standards being made by case law and appeals which add uncertainty and delay to the planning system.

Question 9: Do you agree that unauthorised occupation causes harm to the planning system and community relations? If not, why not?

Yes No

Comments

Agree, however this issue is not restricted to Gypsies and Travellers. All breaches of planning control/ unauthorised occupation, whether by travellers or the settled population cause harm to the planning system and community relations.

Question 10: Do you have evidence of the impact of harm caused by intentional unauthorised occupation? (And if so, could you submit them with your response.)

Yes No

Comments

While evidence of intentional occupation is difficult to establish beyond doubt, many councils have multiple examples of the harmful impact of unauthorised occupation.

- In Swale BC long-running enforcement problems - some lasting up to 8 years - incur legal fees for the council and bring the planning system into disrepute. Despite successful high court rulings, the council has been unable to secure evictions of illegal Gypsy and Traveller camps. This causes friction with the settled community and perceptions of different treatment for different groups of people.
- Chichester DC has numerous examples of short term illegal occupation of land that incur costs and create significant community tension. From February-

September 2013, there were over 50 unauthorised encampments in Chichester, often with 8-10 caravans on car parks, playing fields or open green space. Costs were some £46,000 for legal fees, removal, clean-up and security measures to prevent further encampments. The illegal encampments also caused great tension between Gypsies and Travellers and the local settled community. Complaints included noise, graffiti, dumping of rubbish and denial of access to community facilities.

- In South Buckinghamshire DC unauthorised occupation caused harm to the Green Belt, had a detrimental impact on ancient woodland, the setting of a listed building and on the Colne Valley Park.

Question 11: Would amending Planning Policy for Traveller Sites in line with the proposal set out in paragraph 4.16 of the consultation document help that small number of local authorities in these exceptional circumstances (set out in paragraphs 4.11-4.14 of the consultation document)? If not, why not? What other measures can Government take to help local authorities in this situation?

Yes No

Comments

SEEC members do not feel the proposal puts forward a long term solution and could lead to more problems than solutions:

- It does not address how long term needs arising from exceptional sites should be met in future.
- The proposal is unlikely to gain widespread support from local authorities who are already meeting their objectively assessed need but who could be expected to make additional provision to assist other areas.
- It would add significant tension to Duty to Co-operate discussions between local authorities.

Question 12: Are there any other points that you wish to make in response to this consultation, in particular to inform the Government's consideration of the potential impacts that the proposals in this paper may have on either the traveller community or the settled community?

Yes No

Comments

SEEC member authorities support a responsible attitude to planning for the needs of Gypsy and Traveller groups. While welcoming the principle of the Government's proposals to ensure the planning system treats everyone equally, members feel a number of areas of the consultation proposals need further work.

As outlined in answers above, SEEC members have concerns about how some of the proposals set out in the consultation would be implemented in practice. Particular concerns include the potential for creating new legal and financial burdens for councils and the need to be rigorous in ensuring the planning system treats **all** parties equally.

Additional points include:

- SEEC members would welcome Government action to help local authorities move more swiftly on short term illegal encampments – for example through changes to trespass law to make occupation of publicly owned land a criminal rather than civil offence. This would support quicker enforcement of unauthorised occupation of land.
- Stronger support for councils in enforcement action for unauthorised Gypsy and Traveller encampments – for example from police and the courts – on breaches to planning rules to avoid costly, long running disputes where councils are unable

to secure evictions.

- The proposals are likely to impact on the time taken in determining planning applications for Gypsy & Traveller sites due to the need to assess the evidence of nomadic lifestyle currently or undertaken previously and/or what decision will act in the best interest of a child. Determinations concerning these matters are likely to be tested through the appeal process, which is both costly and time consuming for local authorities.
- Some saw no need to cancel the design guide (para 4.19) as this contains useful information on how sites can be safely designed, and is applicable for temporary or transit use.
- Clarity would be welcome on what protection existing Gypsy & Traveller sites (both permanent and temporary) would have. Would all sites become transit sites, or become 'park home' type sites and be assessed as if occupied by the settled community?

Draft planning guidance for travellers (Annex A)

Question 13: Do you have any comments on the draft planning guidance for travellers (see Annex A of the consultation document)?

Yes

No

Comments

SEEC members welcome the simplification and streamlining of guidance. However there remain certain areas highlighted earlier our response where greater clarity on definitions is needed to help councils avoid legal challenge and the associated costs and delays to development that this would bring.